

BEFORE THE  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES

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In the Matter of,

FRANK LEE, and  
FM CAPITALS aka GENUM LTD.

SUMMARY ORDER TO  
CEASE AND DESIST

DFI CASE NO. S-237859 (EX)

Respondents.

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**I.**

The Administrator of the State of Wisconsin, Department of Financial Institutions, Division of Securities ("Division"), having legal authority and jurisdiction to administer and enforce the Wisconsin Uniform Securities Law, Wis. Stats. Ch. 551 ("Ch. 551") and rules and orders promulgated thereunder, and having determined that this action is necessary and appropriate in the public interest and for the protection of investors, hereby enters this Order as follows:

**II.**

Division staff have presented evidence sufficient for the Administrator to make the following findings of fact and conclusions of law:

**A. Findings of Fact**

**Respondents**

1. FM Capitals aka Genum Ltd. is a binary options broker located at 1408 Sofia City, Sofia District, Metropolitan Municipality, Triaditsa Region, Balsha, No. 14, ap. Office No. 5, Bulgaria. FM Capitals is known to also have an address at 55 Wig Kei Road, Kwaichung, Hong Kong.
2. Frank Lee was the Chief Financial Officer of FM Capitals with a last known address of 1408 Sofia City, Sofia District, Metropolitan Municipality, Triaditsa Region, Balsha, No. 14, ap. Office No. 5, Bulgaria. Another address associated with Frank Lee and FM Capitals is 55 Wig Kei Road, Kwaichung, Hong Kong.

## **Conduct**

3. FM Capitals purported to provide a binary options trading platform to the public. FM Capitals is known to have used the website [www.fmcapitals.com](http://www.fmcapitals.com). The website provided information on how to trade binary options and facilitated trades in binary options by users of the website.
4. On February 24, 2017, an individual who identified himself as Frank Lee contacted Wisconsin resident "PK" of Kenosha, Wisconsin via telephone about investing in binary options. At the time, PK was not familiar with binary options trading.
5. Lee told PK that he could guarantee 10% returns to PK every month and that no more than 10% of PK's investment would be at risk at any one time. Lee also stated the initial minimum investment was \$250,000. Lee also represented that he was working for a firm called "TenOption" in London and he provided wiring instructions to PK for his initial investment.
6. Based on Lee's representations, on February 28, 2017 PK wired \$250,000 to an account at HSBC in Hong Kong.
7. On March 20, 2017, Lee telephoned PK to inform he was now working with FM Capitals and that PK's money had been transferred to an account with FM Capitals, where it was safe and secure.
8. When PK reviewed the status of his FM Capitals account, it appeared he had earned \$25,000 on his \$250,000 investment through binary options trading. On March 30, 2017, Lee wired \$7,460.17 to PK which, according to PK, was to show proof that his money would be available to him.
9. On April 6, 2017, PK wired an additional \$148,305.51 in four separate transactions to an account at HSBC in Hong Kong.
10. On April 10, 2017, Lee contacted PK by telephone. They reviewed PK's FM Capitals account which appeared to show that PK was making a 10% return on his investment. Lee told PK that if he could provide additional funds Lee would be able to get PK 14% back in the next six months instead of the 10% he had been receiving.
11. Based on Lee's representations, on April 19, 2017 PK wired \$107,000 to an account at HSBC in Hong Kong.
12. On April 26, 2017, Lee contacted PK by telephone. They reviewed PK's FM Capitals account which appeared to show that PK was making a 14% return on his investment.

Lee than asked PK to provide an additional \$63,000 to which Lee would contribute an additional \$37,000 as a “bonus” to make the investment an “even \$100,000.”

13. Based on Lee’s representations, on May 4, 2017 PK wired \$63,000 to an account at HSBC in Hong Kong.
14. On May 15, 2017, PK reviewed the status of his FM Capitals account online and saw that neither his \$63,000 nor Lee’s \$37,000 “bonus” were in the account. Lee made several futile attempts to reach Lee by telephone.
15. On May 29, 2017, PK finally made contact with Lee by telephone. Lee showed PK that his account value online was worth over \$800,000. This was the last time PK had any communication with Lee.
16. Unable to reach Lee, on or about June 7, 2017 PK reached out to FM Capitals and was informed that Lee had been detained for money laundering, that his account was frozen, but they would “unfreeze” the account if PK sent FM Capitals \$100,000.
17. On June 14, 2017, PK learned he was no longer able to access his FM Capitals account. Despite PK’s demands, FM Capitals has not returned PK’s \$568,305.51 investment, except for the \$7,460.17 PK received on March 30, 2017.
18. PK retained Birman Law, an Israeli law firm, to assist him in recovering his investment with FM Capitals. Birman Law had contracted with Wealth Recovery International to help investors who had been scammed in binary options schemes. Birman Law demanded PK provide \$28,000 up front before they would attempt to recover his funds.
19. PK paid \$28,000 to Birman Law as requested, but Birman Law was unable to recover his funds. Both Birman Law and Wealth Recovery International are out of business.
20. The FM Capitals binary options transactions are investment contract securities as defined by Wis. Stat. § 551.102(28)(d)1., because they constitute an investment in a common enterprise with the expectation of profits to be derived through the essential managerial efforts of someone other than the investor.
21. The FM Capitals binary options investment contracts have never been registered for offer and sale in Wisconsin pursuant to Ch. 551, Wis. Stats.
22. At no time was FM Capitals registered with the Division in any capacity, nor was it registered with the SEC, CFTC, NFA, FINRA, or the Cyprus Securities and Exchange Commission.

23. At no time was Frank Lee registered with the Division in any capacity, nor was he registered with the SEC, CFTC, NFA, FINRA, or the Cyprus Securities and Exchange Commission.

## **B. Conclusions of Law**

### **Legal Authority and Jurisdiction**

24. The Administrator has legal authority and jurisdiction over the conduct described above, pursuant to Wis. Stats. Ch. 551 and the rules and orders promulgated thereunder.
25. FM Capitals transacted business as a broker-dealer as defined under Wis. Stat. § 551.102(4) and DFI Sec. 1.02(5), Wis. Admin. Code.
26. Frank Lee transacted business as an agent of a broker-dealer as defined under Wis. Stat. § 551.102(2) and DFI Sec. 1.02(5), Wis. Admin. Code.
27. Pursuant to Wis. Stat. § 551.401(1), it is unlawful for a person to transact business in Wisconsin as a broker-dealer unless the person is registered under Ch. 551 as a broker-dealer or is exempt from registration as a broker-dealer under Wis. Stat. § 551.401(2).
28. Pursuant to Wis. Stat. § 551.402(1), it is unlawful for a person to transact business in Wisconsin as the agent of a broker-dealer unless the person is registered under Ch. 551 as an agent or is exempt from registration as an agent under Wis. Stat. § 551.402(2).
29. Pursuant to Wis. Stat. § 551.402(4), it is unlawful for a broker-dealer to employ or associate with an agent who transacts business in this state on behalf of broker-dealers unless the agent is registered under Ch. 551 as an agent or is exempt from registration.
30. Pursuant to Wis. Stat. § 551.301, it is unlawful for a person to offer or sell a security in this state unless the security is registered in this state or is an exempt or covered security.
31. Pursuant to Wis. Stat. § 551.501(3), it is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly, to engage in an act, practice, or course of business that operates as a fraud or deceit upon another person.

### **Violations**

32. Through the conduct described above, FM Capitals violated Wis. Stat. § 551.401(1) by transacting business as a broker-dealer in Wisconsin without being registered under Ch. 551 or exempted from registration under Wis. Stat. § 551.401(2).

33. Through the conduct described above, Frank Lee violated Wis. Stat. § 551.402(1) by transacting business as an agent of a broker-dealer in Wisconsin without being registered under Ch. 551 or exempted from registration under Wis. Stat. § 551.402(2).
34. Through the conduct described above, FM Capitals violated Wis. Stat. § 551.402(4) by employing or associating with an agent who transacts business in this state without being registered under Ch. 551 or exempted from registration under Wis. Stat. § 551.402(2).
35. Through the conduct described above, FM Capitals and Frank Lee violated Wis. Stat. § 551.301 by offering and selling unregistered securities in this state to a Wisconsin investor.
36. Through the conduct described above, all Respondents violated Wis. Stat. § 551.501(3) by conducting their businesses, in connection with the offer and sale of securities, so as to operate a fraud and deceit upon PK.

### III

In view of the above findings of fact and conclusions of law, the Administrator deems it necessary and appropriate in the public interest and for the protection of investors, and pursuant to its legal authority and jurisdiction under Ch. 551, to wit Wis. Stat. § 551.604, to issue the following orders and notices:

#### **A. Summary Orders issued pursuant to Wis. Stat. § 551.604(2)**

- (a) IT IS ORDERED that RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of any RESPONDENT, shall cease and desist from making or causing to be made to any person or entity in Wisconsin any further offers or sales of securities unless and until such securities qualify as federal covered securities or are registered under Ch. 551 or successor statute, pursuant to Wis. Stat. §§ 551.604(1)(a) and (2).
- (b) IT IS FURTHER ORDERED that all exemptions from registration set forth at Ch. 551 or successor statute that might otherwise apply to any offer or sale of any security of or by any of the RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of any RESPONDENT, are hereby revoked, pursuant to Wis. Stats. §§ 551.604(1)(b) and (2).
- (c) IT IS FURTHER ORDERED that RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees and every entity and person

directly or indirectly controlled or hereafter organized by or on behalf of any RESPONDENT, shall cease and desist from violating Wis. Stat. § 551.501 or successor statute.

- (d) PLEASE TAKE NOTICE that the summary orders of the Administrator are effective as of the date of issuance of this order, pursuant to Wis. Stat. § 551.604(2). You are advised that any willful violation of an Order issued by the Division under Ch. 551 is a criminal offense punishable under the provisions of Wis. Stat. § 551.508.

**B. Service of Order**

- (e) IT IS FURTHER ORDERED that this order shall be sent promptly by registered mail to each party named in the order at his or her last known address or to the party's attorney of record, or shall be personally served upon the party or the party's attorney of record, pursuant to Wis. Admin. Code § DFI-Sec. 8.06. This order shall also be served upon the office of the administrator pursuant to Wis. Stat. § 551.611.
- (f) PLEASE TAKE NOTICE that the date of the service of this order is the date it is placed in the mail if service is by certified mail. If a party or the party's attorney is personally served, the date of service is the date service is completed.

**C. Notice of Hearing Rights**

- (g) PLEASE TAKE NOTICE that you have the right to request a hearing. Every request for a hearing shall be in the form of a petition with the Division, pursuant to Wis. Admin. Code § DFI-Sec. 8.01. A petition for a hearing to review the order shall:
- (1) Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient knowledge or information to permit an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; and
  - (2) State all affirmative defenses. Affirmative defenses not raised in the request for hearing may be deemed waived.
- (h) PLEASE TAKE FURTHER NOTICE that you may file your written petition:

- (1) By mailing the written petition to:

Division of Securities  
Wisconsin Department of Financial Institutions

P.O. Box 1768  
Madison, Wisconsin 53701-1768

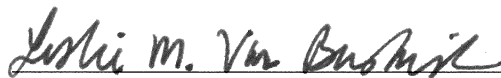
(2) By delivering the written petition in person to:

Division of Securities  
Wisconsin Department of Financial Institutions  
4822 Madison Yards Way, North Tower, 4<sup>th</sup> Floor  
Madison, Wisconsin 53705


(3) By faxing the written petition to 608-264-7979.

- (i) PLEASE TAKE FURTHER NOTICE that the petition for hearing must be filed with the Division. Pursuant to Wis. Stat. § 551.102(8), "filing" means "receipt." Therefore, a petition is not "filed" with the Division until it is actually "received" by the Division. If the Division does not receive your written petition before midnight on the 30<sup>th</sup> day after the date of service of this order, your right to a hearing will be waived and the Summary Order shall become final by operation of law.
- (j) PLEASE TAKE FURTHER NOTICE that, within 15 days after receipt of a request in a record from you, the matter will be scheduled for a hearing or other public administrative proceedings, pursuant to Wis. Stats. §§ 551.604(2) and (3).
- (k) PLEASE TAKE FURTHER NOTICE that if you do not request a hearing and none is ordered by the Administrator within 30 days after the date of service of this order, the findings of fact, conclusions of law, and summary orders, become final as by operation of law, pursuant to Wis. Stat. §551.604(2).

EXECUTED at Madison, Wisconsin, this 2<sup>nd</sup> day of January, 2020.



Leslie M. Van Buskirk  
Administrator



Division of Securities  
State of Wisconsin  
Department of Financial Institutions  
201 West Washington Avenue, Suite 300  
Madison, Wisconsin 53703



**State of Wisconsin**  
*Department of Financial Institutions*

Tony Evers, Governor

Kathy Blumenfeld, Secretary

**AFFIDAVIT OF SERVICE  
AND COMPLIANCE WITH WIS. STAT. § 551.611**

STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF DANE         )

I, KATHERINE CLEMENTI, first being duly sworn, depose and state:

1. I am employed with the State of Wisconsin, Department of Financial Institutions, Division of Securities.
2. In compliance with Wis. Stat. §§ 227.48, 551.611, and 891.46; and Wis. Admin. Code. §§ DFI-Sec 8.06 and 8.07, I have caused to be served copies of the documents below upon the Administrator for the Division of Securities:
  - i. A copy of the Summary Order to Cease and Desist, DFI Case No. S-237859 (EX); and
  - ii. A copy of this Affidavit of Service.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Katherine Clementi  
KATHERINE CLEMENTI

State of Wisconsin  
Department of Financial Institutions  
Division of Securities

Subscribed and sworn to before me

This 2nd day of January, 2019.

Ron Jacobs

Notary Public, State of Wisconsin

My commission is permanent.

